

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Request for Waiver by)	
Union Township School)	File Nos. SLD-260894, SLD-259888
Hampton, New Jersey)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Associations, Inc.)	

ORDER

Adopted: January 29, 2003

Released: January 30, 2003

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Union Township School (Union Township), Hampton, New Jersey.¹ Union Township seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.² Specifically, Union Township requests a waiver of the filing deadline for Funding Year 2001.³ For the reasons set forth below, we deny Union Township's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Michelle Burton. Union Township School, to Federal Communications Commission, filed January 16, 2002 (Waiver Request).

² See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ See Waiver Request. In prior years, Funding Year 2001 was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period that began on July 1, 2001 and ended on June 30, 2002, previously known as Funding Year 4, is now called Funding Year 2001. The funding period that began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

⁴ 47 C.F.R. §§ 54.501-54.503.

technological needs and the services for which it seeks discounts.⁵ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements ~~for~~ eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁶

3. The Commission's rules require that the Administrator implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁷ Applications that *are* received outside of this filing window **are** subject to separate funding priorities under the Commission's rules.⁸ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 2001, the window closed on January 18, 2001.⁹ Starting that Funding ~~Year~~, applicants using the online filing system also had to have their Block 6 certification pages and Item 21 attachments postmarked by the close of the filing window."

4. Union Township seeks a waiver of the Funding ~~Year~~ 2001 filing window because SLD is not authorized to waive the Commission's rules." Specifically, Union Township requests that two of its applications, SLD-260894 and SLD-259888, be treated as timely filed.¹² Union Township claims that the forms were electronically filed "before the deadline" passed.¹³ However, SLD records reveal that the portion of the applications submitted through the online application process, was not submitted before the deadline. Application SLD-260894 was electronically submitted on January 19, 2001.¹⁴ While the application for SLD-259888 was started online on the same date, SLD's records show that it was never submitted electronically through the online filing system.¹⁵ Thus, that application was never completed.¹⁶ Furthermore, Union Township concedes that the Block 6 certification pages and Item 21 attachments, were

⁵ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁶ 47 C.F.R. § 54.504(c).

⁷ 47 C.F.R. § 54.507(c).

⁸ 47 C.F.R. § 54.507(g).

⁹ See SLD website, What's New (November 2, 2000)
<<http://www.sl/universalservice.org/whatsnew/110200.asp#110200>>.

¹⁰ *Id.*

¹¹ Waiver Request; *see also* Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michelle Burton, Union Township School, dated October 5, 2001 (referring to application No. SLD-260894), and Letter from Schools and Libraries Division, Universal Service Administrative Company, to Michelle Burton, Union Township School, dated October 5, 2001 (referring to application No. SLD-259888) (Administrator's Decisions on Waiver Requests).

¹² Waiver Request.

¹³ *Id.*

¹⁴ FCC Form 471, Application SLD-260894, Union Township School, filed January 19, 2001 (electronically filed application) (SLD-260894 Form 471).

¹⁵ FCC Form 471, Application SLD-259888, Union Township School, initiated January 19, 2001 (electronically filed application) (SLD-259888 Form 471).

¹⁶ *Id.*

sent to SLD on January 19, 2001, the day after the filing deadline closed.¹⁷ Therefore, the record clearly demonstrates that Union Township's applications SLD-260894 and SLD-259888 were filed outside the filing deadline.

5. Union Township's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.¹⁸ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule." SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for complying with program rules and procedures.²⁰ Timely submissions are needed because, under the funding mechanism, all requests for funding received within the initial filing deadline must be analyzed together in order to be considered pursuant to the funding priorities for in-window

6. Union Township admits that it was late in submitting its forms, but attributes the delay to an SLD website notice and advice.²² It claims that the SLD website stated in October of 2000 that the deadline was January 19.²³ We note that the filing deadline was January 19 for Funding Year 2000, but that the filing deadline for Funding Year 2001 was January 18.²⁴ In support of its assertion, Union Township includes a screen print of an SLD website notice in October, which states that the deadline for Funding Year 2001 would be in mid-January.²⁵ That statement does not provide the wrong date. Furthermore, the notice also stated in the next sentence that applicants should check SLD's website for the announcement of the exact deadline.²⁶ Union Township also claims that an SLD representative said that the applications would be accepted for processing if sent on January 19, 2001.²⁷ However, this assertion is not supported by the record.

7. We have traditionally held applicants to a high standard for waivers, noting that ultimately it is the applicant who has responsibility for the timely submission of its application. The applicant bears the responsibility of completing the relevant forms and submitting them within the established deadline if the applicant wishes to be considered with other in-window

¹⁷ Waiver Request

¹⁸ See 47 C.F.R. § 1.3

"Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990)

²⁰ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service. Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC.Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

²¹ See 47 C.F.R. § 54.504(c), 54.507(c).

²² Waiver Request

²³ *Id.*

²⁴ See SLD website, FCC Form 471 Window Opens for Year 3 Applicants
<www.sl.universalservice.org/whatsnew/111999.asp#window>.

²⁵ Waiver Request, Attachment

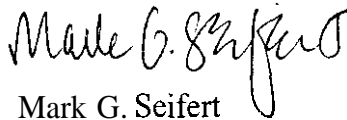
²⁶ *Id.*

²⁷ *Id.*

applicants.²⁸ We find no basis for Union Township's assertion that the information on the SLD website was misleading. We have also consistently held that an applicant's claim of receiving incorrect oral advice from SLD is insufficient to merit a waiver of the Commission's rules.²⁹ Therefore, Union Township's claims that its applications were late due to incorrect advice from SLD is insufficient to justify a waiver. We conclude that Union Township has not demonstrated special circumstances upon which its Waiver Request can be granted.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3. and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3. and 54.722(a), that the Waiver Request filed by Union Township School, Hampton, New Jersey, on January 16, 2002, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert

Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²⁸ See Request for Review by Dermott Special School District, Hoven School District No. 53-2, Mastics-Moriches-Shirley Community Library, Mounds Public Schools, Reading-Muhlenberg Area Vocational-Technical School, Versailles Exempted Village Schools, Westbrook School Department, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File Nos. SLD-252777, SLD-261808, SLD-277850, SLD-265880, SLD-257325, SLD-270374, SLD-220712, CC Docket Nos. 96-45 and 97-21, Order, DA 02-643 (Com. Car. Bur. rel. March 19, 2001).

²⁹ Request for Review by Smackover Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-205330, CC Docket Nos. 96-45 and 97-21, Order, DA 01-2963, para. 8 (Com. Car. Bur. rel. December 19, 2001).